IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.869 OF 2005

Shrikrishna Dasharath Malbari ...Appellant
Vs.
Laxmi Dattaram Devulkar & Ors. ...Respondents

Mr.A.S.Khandeparkar i/b M/s.Khandeparkar & Associates for the Appellant
Mr.V.M.Bhate for Respondent No.1
Ms Deepa Chavan i/b Mr.Prashant Chavan for the Respondent Nos.2 to 4

CORAM: A.S.OKA, J.
DATED: APRIL 13,2006.

P.C.:

1. Heard Shri Khandeparkar for the Appellant. The Appellant is the original Plaintiff. The case of the Appellant is that the sale deed executed by him on 7th June 1985 in favour of the respondent No.1 who is the sister of the Appellant was sham and bogus. The Respondent No.1 executed a lease agreement in respect of the suit property in favour of the Respondent Nos.2 and 4. The lease agreement was executed on 12th February 1993 which was followed by a registered deed of lease executed on 28th July 1993. A suit was filed by the Appellant-Plaintiff for declaration that the sale deed executed by him in favour of the Respondent No.1 was sham and bogus and that it was null and void. The declaration was also claimed of ownership by the Appellant. The Trial court decreed the suit filed by the Appellant. The Trial Court dismissed the suit filed by the Respondents herein for declaration and injunction. The Appellate Court has

interfered and has dismissed the suit filed by the Appellant. By a separate Judgment, the District Court allowed the companion Appeal and decreed the suit filed by the Respondents.

2. Shri Khandeparkar learned Counsel for the Appellant submitted that even assuming that the sale was effected by the Appellant in favour of the Respondent No.1 for avoiding the attachment and sale of the suit property, it was the specific case of the Appellant that the sale was without any consideration. He submitted that the respondent No.1 did not enter the witness box to prove that she had paid any consideration under the sale deed to the Appellant. He, therefore, submitted that the sale deed was void and consequently the lease executed in favour of the other Respondent Nos.2 to 4 was not legal and was not binding on the Appellant-Plaintiff.

3. I have considered the submissions. The Appellate Court on the basis of the categorical admission of the Appellant has recorded a finding that the only object of transferring the suit property in the name of the Respondent No.1 by the sale deed was to save the suit property from attachment and sale. In view of the said finding, the Appellate Court relied upon the decision of the Apex Court reported in AIR 1962 S.C. page 370 (Immani Apparao Vs. Gollapali

Ramalingamurthi) and came to the conclusion that the Appellant is not entitled to declaration as prayed for. The Appellate Court also observed that the Appellant has rested his entire case on the plea that the transfer in the name of the Respondent No.1 is made with the object of defrauding his creditors. The Appellate Court also held and in my view, rightly, that only on the basis of the averments made in the plaint, relief ought not to have been granted by the trial court in favour of the Appellant. The Appellate court held that considering the of public interest where the plaintiff is party to the fraud and is successful in perpetrating the fraud, it is necessary to allow the estate to remain with the Respondent No.1 and her transferees.

4. Going by the averments made in the plaint and the admissions of the Appellant which are referred to by the Appellate Court, I find no error in the view taken by the Appellate Court. When the Appellant himself is guilty of fraud, he cannot seek assistance of the Court. The relief under Section 34 of the Specific Relief Act, 1963 is purely a discretionary relief and while granting such relief equitable considerations should weigh with the Court. If the entire case of the Appellant was based on fraud, he was not entitled to such a discretionary relief.

5. There is no merit is the Second Appeal and the same is

dismissed with no order as to costs.

Judge.